

MAY 1991

Review of Titling and Indexing Procedures Utilized by the Defense Criminal Investigative Organizations



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
CRIMINAL INVESTIGATIONS POLICY AND OVERSIGHT

Report Documentation Page		
Report Date May 1991	Report Type N/A	Dates Covered (from... to) -
Title and Subtitle Review of Titling and Indexing Procedures Utilized by the Defense Criminal Investigative Organizations		Contract Number
		Grant Number
		Program Element Number
Author(s)		Project Number
		Task Number
		Work Unit Number
Performing Organization Name(s) and Address(es) DoD Inspector General ATTN: CIPO 400 Army Navy Drive Arlington, VA 22202		Performing Organization Report Number
Sponsoring/Monitoring Agency Name(s) and Address(es)		Sponsor/Monitor's Acronym(s)
		Sponsor/Monitor's Report Number(s)
Distribution/Availability Statement Approved for public release, distribution unlimited		
Supplementary Notes		
Abstract		
Subject Terms		
Report Classification unclassified		Classification of this page unclassified
Classification of Abstract unclassified		Limitation of Abstract UU
Number of Pages 20		

TITLING AND INDEXING PROCEDURES UTILIZED BY THE
DEFENSE CRIMINAL INVESTIGATIVE ORGANIZATIONS

EXECUTIVE SUMMARY

The House Armed Services Committee (HASC) recently recommended that the Department of Defense (DoD) military criminal investigative organizations (MCIOs) needed to establish a uniform standard for "titling" individuals as subjects of an investigation. The HASC report recommended that the titling standard should be set as probable cause to believe the individual had committed the alleged offense being investigated. The Office of the Inspector General, DoD, (OIG, DoD) was tasked to determine the feasibility of the recommendation.

The OIG, DoD, reviewed in detail the titling policies of the MCIOs. The OIG, DoD, which is responsible for establishing criminal investigative policy in DoD, also conducted the review to determine the effectiveness and efficiency of the existing titling and indexing policies, as titling is no more than a step in maintaining indices of investigations. Further, the review sought to assess the impact of the HASC recommendation on the efficiency and effectiveness of maintaining and retrieving DoD investigative records. Included in the review for comparison were the titling and indexing policies of the: Defense Criminal Investigative Service; Defense Investigative Service; Department of the Army Military Intelligence-Counterintelligence; Federal Bureau of Investigations; U.S. Customs Service; Bureau of Alcohol, Tobacco and Firearms; Internal Revenue Service Criminal Investigation Division and Inspection Service; and United States Secret Service.

The OIG, DoD, review confirmed the need for consistent titling and indexing policies among the Defense criminal investigative organizations. The review also found that the standard recommended in the HASC report would have significant negative impact on DoD investigative operations and would be inconsistent with the policies of the law enforcement community. A DoD criminal investigations titling and indexing policy will be developed based on the findings of the OIG, DoD review. The policy will establish that an individual will be titled as the subject of an investigation when sufficient evidence is developed to warrant an investigation of any allegations. The policy will further provide that indices of investigations will be maintained with more stringent requirements limiting removal of names from such indices.

TITLING AND INDEXING PROCEDURES UTILIZED BY
THE DEFENSE CRIMINAL INVESTIGATIVE ORGANIZATIONS

TABLE OF CONTENTS

A.	INTRODUCTION	1
B.	PURPOSE AND SCOPE OF STUDY	1
C.	SUMMARY	1
D.	BACKGROUND	
1.	Purpose Of Investigations And Reports	3
2.	Purpose Of Titling	3
3.	Defense Clearance and Investigations Index (DCII)	3
E.	CURRENT TITLING AND INDEXING PROCEDURES	
1.	Army Criminal Investigation Command	4
2.	Naval Investigative Service	6
3.	Air Force Office Of Special Investigations	7
4.	Defense Criminal Investigative Service	7
5.	Titling And Indexing Policies Of Additional Agencies	
a.	Defense Investigative Service	7
b.	Department Of The Army Deputy Chief Of Staff Intelligence-counterintelligence Central Control Office	8
c.	Federal Bureau Investigation	8
d.	Bureau Of Alcohol, Tobacco And Firearms	9
e.	U.S. Customs Service	9
f.	Internal Revenue Service	9
g.	U.S. Secret Service	9
F.	FINDINGS	
1.	Federal statutes, such as the Freedom of Information and Privacy Acts, recognize the need for Federal law enforcement and security agencies to maintain "raw intelligence files" for criminal law enforcement and security data bases.	10
2.	Adoption of a probable cause standard would result in the loss of valuable law enforcement information. This would harm the ability of the DoD to work with Federal law enforcement, security, intelligence and counterintelligence agencies by, in effect, censoring the data which goes into the DCII.	11

3. A determination of probable cause is too high a standard for titling decisions listing an individual or entity as the subject of an investigation. 13
4. The NIS, the OSI, and the DCIS, which rely on the DCII as their data base, would each have to establish separate data bases similar to the duplicative system used by the Army. 13
5. The Army system for titling is not effective for law enforcement and investigative purposes. 13

G. RECOMMENDATIONS

1. The IG, DoD, should establish a uniform standard for the DCIOs titling individuals as the subject of an investigation. This action will result in uniformity in the information going into the DCII, and will promote efficiency in the criminal investigative program. 15
2. The uniform standard for titling should be established through the issuance of a Department of Defense policy document. 15
3. The uniform standard for all titling established by the IG, DoD, should be that all titling decisions will be based on a determination that sufficient evidence exists to warrant an investigation. This standard is recommended because it will be the most efficient and is the prevailing titling standard utilized by both DoD and non-DoD law enforcement agencies. Adoption of this standard will require revision of Army CID Regulation 195-1 and Army Regulation 195-2 to remove the probable cause standard for titling, and prevent deletion of names of investigative subjects from the DCII. 15

**TITLING AND INDEXING PROCEDURES UTILIZED BY
THE DEFENSE CRIMINAL INVESTIGATIVE ORGANIZATIONS**

A. INTRODUCTION

Recently, The House Armed Services Committee (HASC) conducted a review of the military criminal investigative organizations (MCIOs). The HASC report recommended that a uniform standard for "titling" individuals as the subject of an investigation needed to be established for the MCIOs. Further, the report recommended that the other military departments revise their procedures along the lines of the Army policy to ensure that probable cause has been proven before "titling" occurs. The Inspector General, Department of Defense (IG, DoD) was asked to monitor the implementation of its actions and inform the committee of its findings [National Defense Authorization Act for Fiscal Year 1991, House Report Number 101-665 at p. 216].

B. PURPOSE AND SCOPE OF STUDY

The Inspector General Act provides that the IG, DoD, develop policy, monitor, and evaluate program performance, and provide guidance to all DoD activities relating to the criminal investigation program. The IG, DoD, in carrying out those responsibilities and the HASC's request to monitor this issue, conducted a study of titling policies and procedures in the DoD investigative organizations. Policies and procedures of other "traditional" federal law enforcement organizations were also reviewed. The others were included in order to present a comprehensive picture of the titling process and its significance in the law enforcement community.

The titling procedures of the MCIOs: the Army Criminal Investigation Command (CID), the Naval Investigative Service (NIS), and the Air Force Office of Special Investigations (OSI), were reviewed in detail. Also reviewed were the titling procedures of the Defense Criminal Investigative Service (DCIS), the Defense Investigative Service, Department of the Army Military Intelligence-Counterintelligence, and five major non-DoD law enforcement agencies, specifically the Federal Bureau of Investigation, the Bureau of Alcohol Tobacco and Firearms, the U.S. Customs Service, the Internal Revenue Service, and the U.S. Secret Service.

C. SUMMARY

The primary purpose for titling an individual as the subject of a criminal report of investigation is to ensure that information contained in the report can be retrieved at some future point in time for law enforcement and security purposes. This is strictly an administrative function. The retrieval is achieved by searching various indices of investigations for the names of persons who are subjects or otherwise titled during an investigation. Experience has shown that the existence of these indices frequently allows

agencies to avoid duplicative investigations and set aside similar allegations more quickly. This can be accomplished by locating and reviewing previous investigative records compiled regarding the titled and indexed entity.

The CID was found to be the only law enforcement or investigative agency that uses a probable cause standard for titling individuals as the subject of an investigation. The standards for titling for the other law enforcement agencies range from a credible evidence standard to the mere receipt of an allegation or complaint. Evidence sufficient to warrant an investigation was found to be the predominate standard used for titling decisions. Also, as discussed in section F.1. of this report, various Federal statutes authorize law enforcement agencies to maintain information for identifying both criminal offenders and **alleged** offenders.

Each of the law enforcement agencies queried during this review had strong reservations regarding the use of probable cause as the standard for titling an individual as the subject of an investigation. They opined that the standard recommended in the HASC report, if implemented, would have significant negative impact on the DoD and upon the ability of non-DoD law enforcement agencies, such as the FBI, to access and use DoD investigative information as it would severely limit the entry of names into the Defense Clearance and Investigations Index (DCII).

Our study resulted in the following recommendations:

1. The IG, DoD, should establish a uniform standard for the CID, NIS, OSI, and DCIS [referred to as the Defense Criminal Investigative Organizations (DCIOs)], titling individuals as the subject of an investigation. This action will result in uniformity in the information going into the DCII, and will promote efficiency in the criminal investigative program.

2. The uniform standard for titling should be established through the issuance of a Department of Defense policy document.

3. The uniform standard for all titling established by the IG, DoD, should be that all titling decisions will be based on a determination that sufficient evidence exists to warrant an investigation. This standard is recommended because it will be the most efficient and is the prevailing titling standard utilized by both DoD and non-DoD law enforcement agencies. Adoption of this standard will require revision of Army CID Regulation 195-1 and Army Regulation 195-2 to remove the probable cause standard for titling, and prevent deletion of names of investigative subjects from the DCII.

D. BACKGROUND

1. PURPOSE OF INVESTIGATIONS AND REPORTS:

The purpose of a criminal investigation is to prove or disprove an allegation of criminality and not to establish the guilt or innocence of an individual. Due process requires that guilt or innocence be established in a court of law. The report of investigation is merely the repository for all those facts tending to prove or disprove the allegation, gathered through observation, interviews, and examination of documentary and physical evidence, obtained during the course of a thorough investigation. The fact that an individual was the subject or otherwise titled during the course of an investigation should not connote guilt or innocence, nor should that fact carry with it any stigma upon which responsible individuals would initiate any inappropriate administrative action. The value of maintaining investigative information is to show that an allegation was raised, pursued, proved, disproved, or in some instances, to establish a *modus operandi*.

2. PURPOSE OF TITLING:

The primary purpose for titling an individual as the subject of a criminal report of investigation is to ensure that information contained in the report can be retrieved at some future point in time, for law enforcement and security purposes. This is strictly an administrative function.

All the law enforcement agencies contacted during the study believe that correct and accurate titling information is essential for maintaining indices for the retrieval of file information and identifying records. The most common method of sharing that information is by identifying the subject by surname.

3. DEFENSE CLEARANCE AND INVESTIGATIONS INDEX:

The Department of Defense established the Defense Central Index of Investigations (DCII) in February 1966. The DCII was established, pursuant to a Secretary of Defense Memorandum dated December 3, 1965, in accordance with Title 5, United States Code, Section 301. The memorandum intended that the DCII constitute a computerized central index of investigations for all of the DoD investigative activities. The name was recently changed to the Defense Clearance and Investigations Index to better reflect the actual contents and use of the index.

The DCII includes not only criminal investigation files, but background and security investigations as well. The index is, therefore, a computerized index for all DoD investigative files. The index was created using the name of the individual or entity titled in the investigation. This indexing system allows law enforcement agencies to identify and retrieve investigative files and to coordinate and share valuable law enforcement information.

There are other frequent users of the DCII system, i.e., non-DoD Federal law enforcement agencies, as well as various security and intelligence agencies. There are approximately 20.2 million investigative entries in the DCII, with approximately 2 million entries added each year.

Once an investigation is initiated, that fact is reported to the DCII by the DCIOs. The NIS, the OSI, and the DCIS use the DCII as a computerized data base for their investigative files. That data base contains a listing of investigation reports and is shared by a host of law enforcement users for various purposes, i.e. criminal investigations, security clearances, establishing a modus operandi, and identifying fraud schemes. The DCII listing is by subject name with some identifying data, but does not set forth the ultimate disposition of the investigation. The user must contact the originating agency and review the file in order to determine the final outcome of the case, and any judicial or administrative disposition of a particular investigation. It should be noted that the Army CID also uses DCII, but maintains a record of the fact that an investigation of an individual subject was conducted in a separate Army data base for a period of forty years. This is true even in those instances where there is a finding of no probable cause and the CID deletes an individual's name from the DCII data base (see the following discussion of CID titling procedures).

E. CURRENT TITLING AND INDEXING PROCEDURES:

1. ARMY CRIMINAL INVESTIGATION COMMAND (CID)

The CID system was studied at length. This was done because the HASC recommendation cites this system as what the DoD standard should be. The CID is the only law enforcement agency contacted that bases titling, and resultantly indexing, decisions on a probable cause determination. The following is an overview of the CID titling process:

Under the CID system, a preliminary investigation is conducted on every allegation received, assuming the CID has jurisdiction over the possible offense. Once the agent develops enough credible evidence during the course of the investigation to determine that an offense was committed and that an individual has committed the offense, that individual is "titled " in an initial report of investigation (ROI) as a suspect, or subject of an open case. The name of the subject or suspect will be removed at a later date if the probable cause standard is not met (see discussion below). The name of a victim may also be indexed depending upon the facts of the particular case. The titling information is then transmitted to the DCII. In some instances, the report is transmitted under a code name or file number and is not retrievable by subject name, thereby making the entry of no value to other non-Army users of the DCII. The information in these instances remains unretrievable for months, or even years, until the conclusion of the investigation and a formal titling decision is made.

An example of the potentially adverse impact of this process can be seen in the case of an Army General Officer who was under investigation regarding alleged improper actions during a contract award and for travel fraud. The General was not "titled" as a subject so his name was not entered into the DCII. An action was proposed regarding the General, requiring Congressional concurrence. When the DCII was researched no record of the ongoing investigation was found. Congress was therefore unintentionally not informed of the allegations or status of the investigation and acted based upon insufficient information. Congressional hearings were later conducted regarding this matter.

At the time of preparation of a final ROI, there is a requirement, under Army CID Regulation 195-1, for the CID agent to coordinate the findings of the report with a Staff Judge Advocate (SJA) office to determine if probable cause exists. The probable cause determination considers two factors: is there sufficient probable cause to believe that an offense subject to the Uniform Code of Military Justice was committed; and is there sufficient probable cause to believe that the individual(s) listed in the title block committed the offense. This process is lengthy and time consuming, frequently taking months to accomplish.

The SJA makes a recommendation based on the sufficiency of the facts in the final ROI as to whether probable cause exists. This is not the finding of a neutral and detached magistrate. No hearing is held, no evidence is reviewed other than that contained in the investigative file. The subject is given no opportunity to present any evidence. The SJA who reviews the file is not a judicial officer and is often an Army trial counsel or a legal advisor to the CID. The investigator and supervisor make the final determination to title the individual after legal advice is provided. The individual is listed in the title block of the final ROI, if a determination is made that there is sufficient probable cause. The information in the final ROI is transmitted to the DCII for listing by subject name. The information concerning the existence of the investigation then becomes known to other non-Army users of the DCII.

If, however, it is determined that there is no probable cause as to either the offense or the individual, the case is closed and the individual's name is removed from the title block. Hence, if an investigation is closed by the CID as unfounded, no information concerning the identity of the individual who was the subject of the investigation remains in the DCII. Further, the initially reported code name or sequence number for an investigation originally submitted in that manner is deleted from the DCII.

[Note: The removal action of a subject name from DCII is not always an automatic procedure. Often, the individual who was the subject of the investigation must submit a Privacy Act Request to amend the ROI to delete the individual from the title block. See further discussion below.]

A record of the fact that an investigation of an individual subject was conducted remains in a separate Army data base for a period of forty years. This is true even in those instances where there is a finding of no probable cause and the CID deletes an individual's name from the DCII data base. The CID has access to that separate data base and can retrieve information concerning investigations and individuals. However, few of the other Federal law enforcement agencies who use the DCII were aware of the Army's separate data base and assumed that all of the CID investigations were input to DCII.

Individuals, who were investigated by the CID, titled based on probable cause, and entered into the DCII, can, under the provisions of Army Regulation (AR) 195-2, present new evidence to the Commander of CID and request that their name be removed from the title block. Also, individuals can petition the Army Board for the Correction of Military Records (ABCMR) to have their name removed from the title block. This may be done citing the Board's equitable authority, under Title 10 United States Code, Section 1552, as prescribed by AR 15-185.

The ABCMR has directed that names (both military and civilian) be removed from the title block and that the name of the individual be expunged from the investigative file. This action was directed even when the investigative file clearly established probable cause. The decision to delete a name from the title block results in the removal of the file from the DCII.

[Note: Neither the Navy nor Air Force Boards for the Correction of Military Records has ever taken a corrective action that resulted in the deletion of a NIS or AFOSI investigation from the DCII.]

2. NAVAL INVESTIGATIVE SERVICE (NIS)

The NIS decides to open an investigation once an agent has analyzed whether: there is merit to the complaint; the complainant is providing valid information regardless of motive; and the matter falls within the investigative jurisdiction of NIS. Once an investigation is commenced, it is indexed and cross-indexed (titled) in accordance with the DCII guidelines. NIS uses personal titles (subject, co-subject, victim, alias), or impersonal titles (generic/incident, company and organization), and project names. This is an investigative decision and there is no requirement for formal coordination with the SJA. Every investigation has a master title that is used to index and to retrieve files. That indexing information is input into the DCII system when a case is opened. Except in the case of mistaken identity, the NIS very rarely removes titling information from the DCII.

3. AIR FORCE OFFICE OF SPECIAL INVESTIGATIONS (OSI)

The OSI decides to open an investigation once an agent determines whether: there is merit to the complaint; the information provided by the complainant is credible; and the matter is within the jurisdiction of the OSI. There is no formal requirement for coordination with the SJA and the decision to open and title an investigation is made by the investigators. The investigative file is indexed and cross-indexed (titled) by subject name, by entity or organization, or if the subject is unknown, by geographic location and date of the incident. That information is entered into the DCII system at case initiation. Like the NIS, the OSI rarely removes data from the DCII, except in a case of mistaken identity.

4. DEFENSE CRIMINAL INVESTIGATIVE SERVICE (DCIS)

The DCIS initiates an investigation and titles an individual when there is sufficient evidence to determine that an investigation is warranted. That procedure depends on a review of the nature of the allegation, the source of the allegation, and a determination of jurisdiction. Each investigative document has a title that identifies the subject of the investigation by business entity name, name of the individual, or a description of the incident under investigation. The decision to open an investigation is made by the Special Agent in Charge at the location where the incident occurred. There is no formal requirement for legal coordination prior to making a titling decision. The information is sent to the DCII once an investigation is initiated. The DCIS does not remove information from the DCII, except information that is clearly erroneous, i.e., mistaken identity.

5. TITLING AND INDEXING POLICIES OF ADDITIONAL AGENCIES

The titling and indexing policies of seven additional DoD and non-DoD law enforcement and investigative agencies were reviewed during the study. This was done in order to present a comprehensive overview of the titling and indexing process and its significance among Federal law enforcement agencies. In summary, none of the other organizations reviewed based their "titling" decision on a probable cause standard. They use, almost without exception, the standard of "sufficient evidence to warrant an investigation" to title and index investigative subjects. The procedures for each of the seven additional agencies reviewed are presented below.

a. DEFENSE INVESTIGATIVE SERVICE (DIS)

The DIS differs from the other DoD investigative agencies in that its primary mission is to conduct non-criminal background investigations for security clearances. As such, requests for security clearances already list the name of the subject of the investigation when sent to DIS. Therefore, the individual upon

whom a background investigation is conducted becomes the title of the investigation. This procedure is applicable to both individuals and corporate entities. The DIS initiates its investigation by first consulting the DCII to determine whether another DoD agency is conducting or has conducted an investigation on the subject of their investigation. If another DoD agency is conducting or has conducted an investigation on the subject, DIS contacts the agency and incorporates their file into the DIS report of investigation.

It is the responsibility of DIS to determine suitability for a position of trust by issuance of a security clearance required for employment. The requestor adjudicates the results of the DIS investigation and determines whether or not to employ the individual. Once the DIS initiates an investigation, that fact is reported to the DCII. There is no probable cause determination necessary to initiate an investigation and no formal requirement for legal review before titling. The DIS does not remove titling information from the DCII.

b. DEPARTMENT OF THE ARMY DEPUTY CHIEF OF STAFF INTELLIGENCE-COUNTERINTELLIGENCE CENTRAL CONTROL OFFICE (DAMI-CI-CIC)

The DAMI-CI-CIC opens an investigation based on a credible evidence standard. The field agent normally receives an allegation of espionage from a source. The allegation is reviewed to determine whether: DAMI-CI-CIC has jurisdiction over the allegation; the information received is credible; and the source is credible. The major subcontrol offices decide to open an investigation. The title of the investigation is referenced by location, date, and category of offense, not by subject name. The individual suspect is not listed in the title block. The titling decision is administrative in nature for record keeping and retrieval purposes and does not require a formal legal review. Unlike the DCIOs and the DIS, DAMI-CI-CIC does not report open investigations to the DCII. After the investigation is closed, the DAMI-CI-CIC refers the file to the U.S. Army Records Repository which enters the file into the DCII once the file is closed. There is no mechanism for removing a suspect's name from the report of investigation.

c. FEDERAL BUREAU INVESTIGATION (FBI)

According to the Field Office Operations Manual of the FBI, the purpose of indexing (the FBI equivalent of titling) is to record individual names and impersonal names (such as corporations and property), which are relevant to FBI investigations. This process is used so that information can be retrieved, if necessary, to support an efficient and effective case management system for current and future investigations. Only information which is relevant and necessary to accomplish a purpose authorized by statute, Executive Order of the President, or by the Constitution, is recorded in FBI files.

Mandatory indexing is required for: 1) case title information (which is any information that is or should be in the title of any case file, including, but not limited to, all known aliases); 2) recipients of subpoenas; 3) individuals polygraphed; 4) electronic surveillance; 5) stop notices, (i.e., notices to stop a vehicle); 6) cooperative witnesses; and 7) "zero" file matters (names of complainants, security officers of private institutions or law enforcement officers). Discretionary indexing can be done for all individuals who furnish information or names developed during the course of an investigation. Indexing is a function performed by the case agent and supervisor. There is no formal requirement for legal coordination before titling.

d. BUREAU OF ALCOHOL, TOBACCO AND FIREARMS (BATF)

The BATF initiates an investigation based upon the receipt of an allegation or complaint. The name of the individual or entity that is the subject of the allegation or complaint becomes the title of the investigation. The mere receipt of the allegation or complaint is sufficient to title the individual. The titling process is administrative in nature and is used as a means of recording and retrieving investigative files. There is no requirement for legal review prior to titling an individual as the subject of an investigation.

e. U.S. CUSTOMS SERVICE

The Customs Service titles an individual on the receipt of an allegation involving a serious administrative or criminal matter. Listing someone as the subject of an investigation is primarily an administrative record keeping practice and is not an indication that an individual has committed an offense. Customs does not remove an individual from the title block, even if the allegation is proven to be unfounded. The titling process is an investigative decision and does not require formal legal review.

f. INTERNAL REVENUE SERVICE (IRS)

The IRS initiates an investigation based on the receipt of an allegation or complaint. The taxpayer who is the subject of the allegation or complaint is listed as the subject of the investigation (titled). There is neither a requirement to establish probable cause, nor a requirement for legal review prior to making the titling decision.

g. U.S. SECRET SERVICE

The Secret Service initiates an investigation based on the receipt of an allegation or a complaint. The agent performs an initial inquiry into the validity of the complaint, the credibility of the source, and jurisdiction over the subject matter of the complaint. The report of investigation is listed (titled) in the name of the individual involved, or by incident if a subject cannot be identified. There is no formal requirement for legal coordina-

tion prior to reaching a titling decision. The decision to title an individual or incident is an investigative determination made by the agent and is for administrative purposes only. The Secret Service does not remove individuals from the title block even if the allegation is unfounded.

F. FINDINGS

1. Federal statutes, such as the Freedom of Information and Privacy Acts, recognize the need for Federal law enforcement and security agencies to maintain "raw intelligence files" for criminal law enforcement and security data bases.

a. The agencies studied pointed out that the Freedom of Information and Privacy Acts, Title 5, United States Code, Sections 552j and k, both recognize the need for Federal law enforcement agencies to maintain investigative files with raw information and to have the ability to retrieve that data for law enforcement and security purposes (see paragraphs b.-d. below). Those statutes provide adequate safeguards to protect the need to collect and store such information and protect individuals against unwarranted intrusions of their privacy. Adoption of the HASC standard would, in fact, add little to ensure the privacy of the individual.

b. Title 5, United States Code, Section 552a(4) defines the term "record" as "any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or identifying number, symbol, or other identifying particular assigned to the individual...".

c. Title 5, United States Code, Section 552j(2)(A) authorizes agencies whose primary function is law enforcement to maintain "information compiled for the purpose of identifying individual criminal offenders and alleged offenders..." (emphasis added), and "information compiled for the purpose of a criminal investigation...".

d. Furthermore, Title 5, United States Code, Section 552k(2) provides special authority for law enforcement agencies to maintain investigative material. Normally, Title 5, United States Code, Section 552(e)(5), requires Federal agencies to maintain "all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination." However, Congress specifically exempted law enforcement agencies from that requirement by promulgating Title 5, United States Code, Sections 552j and 552k. Congress clearly recognized the need for law enforcement agencies to maintain raw investigative data.

e. Other considerations regarding the titling of investigative files by subject name involve requests under the

Freedom of Information Act (FOIA), Title 5, United States Code, Section 552. Those considerations are twofold: 1) the ability of the requestor to identify the information sought; and 2) the ability of the agency to defend against potential law suits. It would be all but impossible for the DCIOs to comply with FOIA requests or to defend against potential law suits if investigative files were not indexed (titled) by subject name.

2. Adoption of a probable cause standard would result in the loss of valuable law enforcement information. This would harm the ability of the DoD to work with Federal law enforcement, security, intelligence and counterintelligence agencies by, in effect, censoring the data which goes into the DCII.

a. The investigative and law enforcement agencies had a serious concern regarding the probable cause standard employed by the CID. The concern is that a subject name would not be input, or can be deleted from, the DCII if probable cause is not established by the final report of investigation. Adoption of the HASC recommendation could result in erasing millions of records of investigations for all of the DoD investigative agencies. Most of the law enforcement agencies check the DCII at the beginning of their criminal and background investigations. This would severely hamper the ability of investigators to successfully conduct such investigations.

b. The DoD DCII, allows investigators, both DoD and non-DoD, to identify previous and current investigations. The fact that a previous investigation was conducted is valuable investigative information that should not be deleted from the DCII. The identification of numerous investigations of the same company or individual, for a similar crime, allows the Government to identify a pattern and practice of misconduct. Such patterns can provide a basis for the Government to coordinate appropriate criminal, civil, contractual, and administrative remedies for procurement fraud. Further, previous investigations, regardless of their outcome, can be used to: establish a modus operandi in subsequent investigations of the same person; avoid duplicate investigations; record previous allegations; update security clearances; and provide a starting point for follow-on investigations on the same individuals or entities. The HASC recommendation would wipe out a large portion of this intelligence data base. Law enforcement agencies other than CID rarely, if ever, delete information from the DCII data base, unless the information is clearly erroneous, i.e., mistaken identity.

c. One example that illustrates the need for maintaining information in the DCII on unfounded allegations is "Ill Wind." A DCII check on some individuals, who later became targets during the Ill Wind investigation, revealed that there were previous investigations of those individuals for similar misconduct. The previous allegations were similar to the new allegations, lending some credibility to the new allegations. As a result, the new allegations were pursued. Had those previous cases been conducted

by the CID, and the CID procedures followed, the information concerning the previous investigations would not have been in the DCII.

In a further example, an individual in the western part of the U.S. had been investigated several times by different agencies. The individual wrote to members of Congress asking for relief from multiple repetitive investigations. The DCIS received allegations regarding this individual. A DCII check revealed the existence of the prior cases. A review of the files located through the DCII check resulted in an expeditious resolution of the matter. The individual subject wrote thank you letters to the DoD, acknowledging the rapid and professional manner in which DCIS was able to conclude the matter. The waste of valuable limited investigative resources, as well as another investigation being imposed on this individual was prevented.

d. Some military cases, such as child abuse by DoD physicians and teachers, are resolved by commanders before a judicial finding of probable cause can be reached. Cases have been identified where the subject is allowed to resign from the DoD, and solicit employment with another Federal agency or state or local organization. The military investigative file is the only record of the investigation that can be used to alert public health and safety officials to such investigations. The use of probable cause for titling would remove the record of these investigations.

e. Congress recently mandated closer cooperation between the DoD and civilian law enforcement agencies on such matters. For example, The Defense Authorization Act of 1990, Public Law 101-510, requires the DoD to develop a closer working relationship with the Department of Justice on child abuse cases. More recently, The Victims of Child Abuse Act of 1990 [incorporated into the Crime Bill of 1990, Public Law 101-647], requires that DoD officials, to include law enforcement agencies, improve the manner in which child abuse investigations are conducted. The Act places reporting requirements on DoD law enforcement officials that cannot be met if the CID probable cause standard is adopted. The HASC recommendation would destroy any meaningful cooperation in such cases if probable cause must be established before an individual or entity could be titled as the subject of an investigation.

f. Congress also has placed emphasis on an increase in DoD involvement in efforts to combat drugs. One of the primary functions DoD assets perform is to engage in gathering criminal intelligence. The HASC standard for indexing (titling) would reduce retrievability of information gathered by DoD investigators participating in such drug task force efforts.

3. A determination of probable cause is too high a standard for titling decisions listing an individual or entity as the subject of an investigation.

a. A probable cause determination is a legal determination that should be made by the courts and should not be made a part of the investigative process. A court of law is certainly more qualified to rule on questions of admissibility of evidence, hearsay, search and seizure, etc., in arriving at a probable cause determination than are an agent and supervisor conducting an investigation. Even the SJA coordination process required by CID Regulation 195-1 is not a true safeguard because the SJA is not a detached and neutral magistrate.

b. Another major concern of the agencies is that by establishing probable cause as the standard for determining titling decisions, there is a predisposition in the investigative report to reach a finding of guilt or innocence. Under the HASC recommendation, the investigator would have to establish probable cause as to the offense and, secondly, probable cause as to the individual who committed the offense. The report of investigation then becomes conclusionary in nature. This is universally recognized as an inappropriate use of the investigative process and could also lead to a variety of abuses in administrative due process. The report should remain an objective repository of the facts and evidence bearing on the allegations.

4. The NIS, the OSI, and the DCIS, which rely on the DCII as their data base, would each have to establish separate data bases similar to the duplicative system used by the Army.

a. As discussed earlier the Army, in fact, maintains a separate data base from DCII. They capture and can retrieve names of individual subjects regardless of deletions made to the DCII due to lack of probable cause. The HASC recommendation would necessitate creation and maintenance of similar systems in the Navy, Air Force, and by the DCIS so investigative information could be retrieved. Also of concern is the necessity of having to maintain such a data base to honor Freedom of Information Act requests and defend against potential law suits.

b. A separate computer system would be necessary to contain the records expunged from the DCII due to a lack of probable cause. The Navy and Air Force were concerned about the high cost of establishing such a data base. An additional system is an unnecessary duplication of effort and expense.

5. The Army system for titling is not effective for law enforcement and investigative purposes.

a. Two drawbacks in addition to those discussed above are inherent in the current CID process of titling based on probable cause:

3. A determination of probable cause is too high a standard for titling decisions listing an individual or entity as the subject of an investigation.

a. A probable cause determination is a legal determination that should be made by the courts and should not be made a part of the investigative process. A court of law is certainly more qualified to rule on questions of admissibility of evidence, hearsay, search and seizure, etc., in arriving at a probable cause determination than are an agent and supervisor conducting an investigation. Even the SJA coordination process required by CID Regulation 195-1 is not a true safeguard because the SJA is not a detached and neutral magistrate.

b. Another major concern of the agencies is that by establishing probable cause as the standard for determining titling decisions, there is a predisposition in the investigative report to reach a finding of guilt or innocence. Under the HASC recommendation, the investigator would have to establish probable cause as to the offense and, secondly, probable cause as to the individual who committed the offense. The report of investigation then becomes conclusionary in nature. This is universally recognized as an inappropriate use of the investigative process and could also lead to a variety of abuses in administrative due process. The report should remain an objective repository of the facts and evidence bearing on the allegations.

4. The NIS, the OSI, and the DCIS, which rely on the DCII as their data base, would each have to establish separate data bases similar to the duplicative system used by the Army.

a. As discussed earlier the Army, in fact, maintains a separate data base from DCII. They capture and can retrieve names of individual subjects regardless of deletions made to the DCII due to lack of probable cause. The HASC recommendation would necessitate creation and maintenance of similar systems in the Navy, Air Force, and by the DCIS so investigative information could be retrieved. Also of concern is the necessity of having to maintain such a data base to honor Freedom of Information Act requests and defend against potential law suits.

b. A separate computer system would be necessary to contain the records expunged from the DCII due to a lack of probable cause. The Navy and Air Force were concerned about the high cost of establishing such a data base. An additional system is an unnecessary duplication of effort and expense.

5. The Army system for titling is not effective for law enforcement and investigative purposes.

a. Two drawbacks in addition to those discussed above are inherent in the current CID process of titling based on probable cause:

1) There may be too great a time delay between the time when a file is preliminarily reported to the DCII by the CID, and the time when it is finally reported in a retrievable manner following a final determination of probable cause. Numerous other ongoing investigations of the same individual could be initiated by the DCIOs during that time period. However, because of the CID practice, the other organizations may not know of the existence of an ongoing CID investigation of the same subject. That has an adverse impact on the ability of the other DCIOs to coordinate their investigative activity with the CID.

2) The time delays in reporting final information to the DCII caused by the coordination process between the agent and SJA have an adverse impact on other DoD agencies conducting investigations.

b. Officials of CID expressed concerns that the process of establishing probable cause is:

1) A time consuming process of coordination between the agent and the SJA during the preparation of the final report of investigation establishing probable cause;

2) A time consuming process of reviewing and deleting reports of investigation where probable cause was not established and instances where individuals have submitted Privacy Act requests for amendments to reports of investigation; and

3) A burden placed on an individual who is the subject of a CID report of investigation and requests to have his name removed from the title block. That individual must present substantial evidence to refute a probable cause determination. Much of that effort is unnecessary, considering that the primary function of "titling" is merely to provide an administrative method whereby files are indexed and retrieved.

c. The IG, DoD, issued a report in February 1987, pointing out the adverse impact of the CID procedure of deleting investigative records from the DCII due to a lack of probable cause. The IG, DoD, recommended that the CID procedure of deleting information from the DCII be discontinued, except in the case of juvenile offenders. The CID rejected that recommendation and continues the process to the present. The other law enforcement agencies also complained about the CID procedure of expunging investigative files from DCII.

G. RECOMMENDATIONS:

The titling procedures between the CID and the DCIOs vary greatly. That disparity has lead to an inefficient use of the DCII and has negatively impacted on the ability of the DCIOs and other

investigative and law enforcement agencies to conduct investigations. It is recommended that:

1. The IG, DoD, should establish a uniform standard for the DCIOs titling individuals as the subject of an investigation. This action will result in uniformity in the information going into the DCII, and will promote efficiency in the criminal investigative program.

2. The uniform standard for titling should be established through the issuance of a Department of Defense policy document.

3. The uniform standard for all titling established by the IG, DoD, should be that all titling decisions will be based on a determination that sufficient evidence exists to warrant an investigation. This standard is recommended because it will be the most efficient and is the prevailing titling standard utilized by both DoD and non-DoD law enforcement agencies. Adoption of this standard will require revision of Army CID Regulation 195-1 and Army Regulation 195-2 to remove the probable cause standard for titling, and prevent deletion of names of investigative subjects from the DCII.